

STATE INDEPENDENT ETHICS COMMISSIONS -- STATE SURVEY

SEPARATION OF POWERS CASE LAW

Article VI, Section 10 of the Utah Constitution provides: "Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all members elected, expel a member for cause."

State Independent Ethics Commission	Judge Members' Elections and Qualifications -- Censure or Discipline	Case Law Addressing Independent Ethics Commissions and Separation of Powers Issues (<i>Including Additional Comments</i>)
Alabama Ethics Commission Ala. Code §§36-25-3 (-1 to -4), created in 1974	<p><i>shall</i> judge of election, returns, and qualifications of its members Ala. Const. Section 51.</p> <p>Each house <i>shall</i> have power to . . . punish its members . . . ; to enforce obedience to its processes; . . . and with the concurrence of two-thirds of the house, to expel a member Ala. Const. Section 53.</p>	
Alaska Public Offices Commission Alaska Stat. 15.13.020, created in 1974	<p><i>is</i> the judge of election and qualifications of its members</p> <p>Each [house] . . . <i>may</i> expel a member with the concurrence of two-thirds of its members Alaska Const. art. 2, § 12.</p>	The Public Offices Commission can investigate, but matters are adjudicated by the legislative ethics committee

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Arkansas Ethics Commission Ark Code Ann. § 7-6-217, created 1991	<p><i>shall be sole</i> judge of the qualifications, returns, and elections of its own members Ariz. Const. art. V, § 11.</p> <p>Each house <i>shall</i> have the power to . . . punish its members . . . ; to enforce obedience to its process; . . . and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause. Article 5, Section 12.</p>	<p>Spradlin v. Arkansas Ethics Commission, 85 S.W. 2d 684 (Ark. 1993). The Arkansas Supreme Court considered whether the provision which created the Arkansas Ethics Commission violated the state constitution's separation of powers provision. The provision provided for the <i>appointment of one commissioner to the state ethics commission for elections by the chief justice of the state supreme court</i>. Appellants argued that the appointment provision violated the state constitution's separation of powers provision, and Appellees argued that the Commission was quasi-judicial in nature, thus the appointment provision was constitutional.</p> <p>The court pointed out that the Commission had the authority, in part, to issue advisory opinions and guidelines, investigate alleged violations and render findings and disciplinary action, subpoena persons and documents, administer oaths, conduct hearings, and take sworn testimony. These were powers often possessed by boards, commissions, and agencies, and the court had held on a number of occasions that such powers were not judicial in nature. The court instructed that whether or not a particular body is acting in a judicial capacity is evidenced by the ability of that body to enforce its own orders. The only action that the Commission could take upon finding a violation was to <i>issue a public letter of caution or warning, or report its findings to the appropriate law enforcement authorities</i>. Thus, by appointing a commissioner to a non-judicial body, the judiciary encroached upon another department. The court held that by designating the Chief Justice of the Supreme Court to appoint one of the members of the Commission, the portion of the Act creating the Commission violated separation of powers.</p>
California Fair Political Practices Commission Cal. Govt. Code §§ 83100 to 83124, created 1975	<p><i>shall</i> judge the qualifications and elections of its members</p> <p>Each house, [by] two-thirds of the membership concurring, <i>may</i> expel a Member Cal. Const. art IV, § 5(a).</p>	<p>See <i>In re McGee</i>, 226 P.2d 1, 5 (Cal. 1951) ("[T]he jurisdiction to judge qualifications and elections of assemblymen lies exclusively with the Assembly and it cannot delegate that duty.").</p>

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Colorado Independent Ethics Commission Colo. Const. art XXIX, created 2006	<p><i>shall</i> judge the election and qualifications of its members</p> <p>Colo. Const. art. V, § 10.</p> <p>Each house <i>shall</i> have the power . . . to adopt rules providing punishment of its members; . . . to enforce obedience to its process; and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause.</p> <p>Colo. Const. art. V, § 12.</p>	<p><i>shall be the final</i> judge of election returns and qualifications of its own members</p> <p>Conn. Const. art. III, § 7.</p> <p>Each house <i>shall</i> . . . punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same cause</p> <p>Conn. Const. art. III, § 13.</p> <p><i>shall be the</i> judge of the elections, returns, and qualifications of its own members</p> <p>Del. Const. art. II, § 8.</p> <p>Each House <i>may</i> . . . punish any of its members for disorderly behavior, and with the concurrence of two-thirds of all the members elected thereto expel a member</p> <p>Del. Const. art. II, § 9.</p>

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Florida Commission on Ethics Fla. Stat. §§ 112.320 - 112.326, created 1974	<p><i>shall be the sole</i> judge of the qualifications, elections, and returns of its members Fla. Const. art. III, §2.</p> <p>Each house <i>may</i> punish a member for contempt or disorderly conduct and, by a two-thirds vote of its membership, may expel a member. Fla. Const. art. III, § 4(d).</p>	<p>In <i>Florida Commission on Ethics v. Plane</i>, 369 So. 2d 332, 337 (Fla. 1979), the Florida Commission on Ethics had found probable cause to believe that five named state senators breached the public trust by failing to file full and public disclosure of their financial interests. The senators argued that by issuing a public report, the Commission unconstitutionally sought to infringe upon the constitutional <i>prerogative of the legislature to discipline its own members</i>. At issue in this case was the meaning of the words "public report" in article II, section 8(f) of the Florida Constitution. The Florida Supreme Court disagreed and held that a report of the commission "does not commence official action for discipline, nor does it in any other way penalize, affect qualifications, punish, or unseat an officeholder. . . . The penalties under the ethics code and the power to enforce its provisions are also specifically left to the governor, legislature, attorney general, and other public officers . . . In short, the commission administers no program; it enforces no law . . ." (This statutory procedure has subsequently been changed).</p> <p>In <i>Comm'n on Ethics v. Sullivan</i>, 489 So.2d 10 (Fla. 1986), the Florida Supreme Court had to determine <i>in which branch of government the Commission on Ethics properly resided</i>. The Commission had simply been given the duty and power to receive and investigate complaints specifically relating to the Code of Ethics, as established by the legislature. Appellees Wilma and John Sullivan, respectively the Supervisor of Elections and Deputy Supervisor of Elections for Leon County, were the subjects of complaints filed with the Commission. The Sullivans argued that the Commission is part of the executive branch, and the power to appoint its members resided exclusively with the governor. They claimed that the statute (112.321(1) requiring <i>appointment of Commission members by the Speaker of the House and the President of the Senate violated the state constitution's separation of powers</i>, executive department powers, and vacancy in office provisions.</p> <p>The court was not persuaded by Appellees' argument and concluded, "<i>The authority of the [Commission] is most closely analogous with the powers exercised by . . . legislative branch entities.</i>" 489 So. 2d at 14. The court doubted the Commission's "ability to take authoritative action to fulfill the charge of faithfully enforcing the laws," -- the hallmark of executive power. 489 So. 2d at 12. The court recalled its holding in <i>Plane</i>, "[A] report of the commission 'does not commence official action for discipline,' nor does it in any other way penalize, affect qualifications, punish, or unseat an officeholder." Id. The court unequivocally confirmed that the Commission had full authority and jurisdiction to receive and investigate complaints specifically relating to the Code of Ethics.</p> <p>The court confirmed that the Commission had full authority and jurisdiction to receive and investigate complaints specifically relating to the Code of Ethics.</p>

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Georgia State Ethics Commission Ga. Code Ann. § 21-5-1 <i>et seq.</i> , created 1974	<p><i>shall be the</i> judge of the election, returns, and qualifications of its members</p> <p>Each house <i>shall . . . have power to punish [its members] for disorderly behavior or misconduct by censure, fine, imprisonment, or expulsion; but no member shall be expelled except by a vote of two-thirds of the members of the house to which such member belongs.</i> Ga. Const. art. III, § 4, Para. 7.</p>	
Hawaii State Ethics Commission Haw. Rev. Stat. § 84-21, created 1968	<p><i>shall be the</i> judge of the elections, returns and qualifications of its own members</p> <p>Each house . . . <i>shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member.</i> Haw. Const. art. III, § 12.</p>	

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Kansas Governmental Ethics Commission Commission on Governmental Standards and Conduct Kan. Stat. Ann § 25-4119a, created 1974	<p><i>shall</i> be the judge of elections, returns and qualifications of its own members</p> <p>Each house <i>shall</i> provide for the expulsion or censure of members in appropriate cases.</p> <p>Kan. Const. art. II, § 8.</p>	<p>In Parcell v. State, 620 P.2d 834 (1980), the Kansas Supreme Court considered whether the Governmental Ethics Commission, the majority of which is appointed by legislators, constitutes a <i>usurpation of executive power by the legislative branch of government, thus violating the doctrine of separation of powers</i>. (There is no separation of powers provision in the Kansas Constitution; however, the doctrine has been adopted by case law.) The Commission consisted of eleven members, of which five were appointed by the Governor and the remainder appointed by the Legislature.</p> <p>Commission functions included the power to adopt rules and regulations governing the administration of the Campaign Finance Act, and the power to receive and investigate complaints for violations. <i>Id.</i> at 797, 620 P.2d at 836. If probable cause is found, the Commission through its executive director prosecutes the complaint before members of the Commission. However, the commission was not given enforcement power, which powers were left to the legislative and executive branches. <i>Id.</i></p> <p>For a usurpation of powers to exist, there must be a <i>significant interference</i> by one department with the operations of another department. The court described the Ethics Commission as a "cooperative venture rather than the usurpation of power by the legislative branch from the executive branch." In adhering to the recognition that the doctrine of separation of powers permits to some extent the blending of powers, the court concluded that the fact that the majority of commission members were appointed by the Legislature did not usurp the executive power of appointment. <i>Id.</i> at 798, 620 P.2d at 837.</p>

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<p>Louisiana Board of Ethics La. Rev. Stat. Ann. §§ 42:1132 et seq., created 1996</p> <p><i>Replaced the Board of Ethics for Elected Official and the Commission on Ethics for Public Employees</i></p>	<p><i>shall</i> be the judge of the qualifications and elections of its members</p> <p>Each house <i>may</i> punish its members for disorderly conduct or contempt; and may expel a member with concurrence of two-thirds of its elected members. Expulsion creates a vacancy in the office.</p> <p>La. Const. art. III, § 7.</p>	<p>In <i>In re Arnold</i>, 99 So. 2d 531 (La.App. 1 Cir. 2008), the Louisiana Board of Ethics charged two state legislators (Arnold and Heaton) with violations of the Louisiana ethics law for participating in the discussion and vote on several bills "concerning consolidation of the Assessor's Office in Orleans Parish, while Arnold's father and Heaton's brother served as elected assessors in Orleans Parish." 99 So. 2d at 534. The Board alleged that the legislators were prohibited from participating in the discussion and vote under the Code of Ethics because they had actual knowledge that members of their immediate families had a substantial economic interest in the legislation. <i>Id.</i> The legislators contended that they were entitled to legislative immunity under the <i>Louisiana Constitution</i>, and the Board was barred from "investigating, prosecuting, adjudicating, and penalizing them for participation in the legislative process during their service in the legislature when acting within the sphere of legislative activity." <i>Id.</i></p> <p>The Louisiana Court of Appeals agreed with the legislators, holding that under the constitutional doctrine of legislative immunity, <i>only the appropriate house could question or penalize the legislators for any actions taken by them within the sphere of legitimate legislative activity</i>. <i>Id.</i> at 541-45. The court also rejected the Board's argument that the Legislature waived such immunity when it enacted the Code of Ethics and made the Code apply to members of the Legislature. <i>Id.</i> In reaching its holding, the court explained, "We reject the Board's argument that our holding will exempt all legislators from the Code of Governmental Ethics when their actions may be within the legislative sphere. On the contrary, our holding herein does not exempt legislators from the duties imposed upon them in the Code, rather, it merely provides that any alleged violation of those duties occurring within the 'legitimate legislative sphere' may not be questioned 'elsewhere,' other than in the legislature. Thus, pursuant to [the Louisiana Constitution], where a legislator's actions within the legitimate legislative sphere, such as speech, debate, and voting on matters before the legislature, constitute an alleged violation of the Code of Governmental Ethics, the Board of Ethics is without jurisdiction to question or punish such action. Nonetheless, the legislator is not exempt from questioning and punishment for those actions. Instead, the power to question the legislator in such an instance is within the sole province of the legislature." <i>Id.</i> at 545.</p>

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Maine Commission on Governmental Ethics and Election Practices Me. Rev. Stat. Ann. tit. 1, § 1002, created 1976	<p><i>shall</i> be the judge of the elections and qualifications of its own members Me. Const. art. 4, Part 3, § 3.</p> <p>Each house <i>may</i> . . . punish its members for disorderly behavior, and, with the concurrence of 2/3, expel a member, but not a 2nd time for the same cause Me. Const. art. 4, Part 3, § 4.</p>	<p>The Maine Commission on Governmental Ethics and Election Practices can investigate, but matters are adjudicated by the ethics committees.</p>
Maryland State Ethics Commission Md. Code Ann., State Gov't Art. §§ 15-101 et seq., created 1979	<p><i>shall</i> be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State</p> <p>Each house <i>shall</i> . . . punish a member for disorderly or disrespectful behavior and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence Md. Const. art. III, § 19.</p>	<p>The State Ethics Commission has jurisdiction over legislators for financial disclosure only. <i>The Maryland Joint Committee on Legislative Ethics</i> has jurisdiction over legislators with respect to conflicts of interest.</p>

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Massachusetts State Ethics Commission Mass. Gen. Laws Ann. chs. 268A, 268B, created 1978	<p><i>shall</i> be the final judge of the elections, returns and qualifications of their own members, as pointed out in the constitution Mass. Const. Part 2, Ch. 1, § 2, Article 4 -- Senate; Mass. Const. Part 2, Ch. 1, § 3, Article 10 -- House of Representatives.</p> <p>And the senate and house of representatives <i>may</i> try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best. Mass. Const. Part 2, Chapter 1, Section 3, Article 11.</p>	<p>Opinion of Justices to Senate, 376 N.E.2d 810 (Mass. 1978). The Senate requested an opinion from the Massachusetts Supreme Court Justices regarding the constitutionality of an initiative petition seeking passage of a comprehensive ethics law governing <i>public officers</i>. The proposed law would required certain state and county public officials and employees, as well as candidates for elective and certain appointive state and county offices, to disclose their financial interests publicly each year.</p> <p>Section § 6 (d) of the initiative prohibited a public official from taking the oath of office or entering on or continuing with his duties unless he had filed a financial interest statement. The court determined that this section, as applied to state senators and representatives, would violate the <i>constitutional right of the Senate and the House of Representatives to be the judges of the elections, returns and qualifications of their members.</i> ("Public official" was defined in § 2 (m) as including any <i>elected official in the State Legislature.</i>) The court noted that the <i>constitutional authority of each branch of the Legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final.</i> <i>Dinan v. Swig</i>, 223 Mass. 516 (1916).</p>
Minnesota Campaign Finance and Public Disclosure Board Minn. Stat. §§ 10A.01 et seq., created 1974 <i>formerly Ethical Practices Board</i>	<p><i>shall</i> be the judge of the election returns and eligibility of its own members Minn. Const. art. IV, § 6.</p>	<p>Each house <i>may</i> punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense. Minn. Const. art. IV, § 7.</p>

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Mississippi Ethics Commission Miss. Code Ann. §§ 25-4-1 et seq., created 1979	<p><i>shall</i> judge of the qualifications, return and election of its own members</p> <p>Miss. Const. art. IV, § 38.</p> <p>Each house <i>may</i> punish its members for disorderly behavior, and, with the concurrence of two-thirds of the members present, expel a member; but no member, unless expelled for theft, bribery, or corruption, shall be expelled the second time for the same offense. Miss. Const. art. IV, § 55.</p>	<p>Each house <i>may</i> punish its members for disorderly conduct; and, with the concurrence of two-thirds of all members elect, may expel a member; but no member shall be expelled a second time for the same cause. Mo. Const. art. III, § 18.</p> <p>The Commissioner has jurisdiction over the legislature unless the complaint involves a legislative act. In such cases, the oversight <i>committees</i> are the Senate Ethics Committee, Senate Rules Committee, and the House Ethics Committee.</p>
Missouri Ethics Commission Mo. Rev. Stat. § 105.955	<p><i>shall</i> be sole judge of the qualifications, election and returns of its own members</p> <p>Each house <i>may</i> punish its members for disorderly conduct; and, with the concurrence of two-thirds of all members elect, may expel a member; but no member shall be expelled a second time for the same cause. Mo. Const. art. III, § 18.</p>	<p><i>shall</i> judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections.</p> <p>Each house <i>may</i> expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.</p>
Montana Commissioner of Political Practices Mont. Code Ann. §§ 13-37-101 et seq.		

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Nebraska Accountability and Disclosure Commission Neb. Rev. Stat. § 49-1401 et seq.	<p><i>The Legislature shall</i> determine the rules of its proceedings and be the judge of the election, returns, and qualifications of its members.</p> <p>No member <i>shall</i> be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense.</p> <p>Neb. Const. art. III, § 10.</p>	<p><i>In Hardy v. Nevada Commission on Ethics, No. 53064 (Nev. May 21, 2009)(Order of Affirmance)</i>, the Nevada Supreme Court concluded that the Commission on Ethics was barred from conducting any further proceedings against a senator based on the constitutional doctrine of separation of powers. The court held that the discipline of legislators is a constitutionally committed function of the Legislature and that the power to discipline cannot be delegated to the extent that the conduct at issue involves a core legislative function such as voting and, by extension, disclosure of conflicts of interest prior to voting. Any discipline for purported disorderly conduct in the course of exercising these core function activities is a function constitutionally committed to each legislative house with regard to its members. The court noted that it has not addressed what legislative actions are subject to discipline for disorderly conduct under this constitutional provision.</p> <p>The court further held that the Commission is an agency of the executive branch -- it was created to execute Nevada's ethics laws and it has the power to impose civil penalties. The Commission is required to comply with the Administrative Procedures Act as it falls within the APA's definition of "agency." The Commission's budget is part of the Governor's budget for the Executive Department and it must comply with the State Budget Act. Finally, the Commission's Executive Director and General Counsel and its other employees are in the unclassified service and are governed by the State Personnel System, which applies to the Executive Department.</p> <p>In addition, a legislature cannot waive constitutionally based structural protections such as the separation of powers doctrine [simply by including the Legislature as being subject to the code of ethics]. Because the power to discipline is expressly granted to each legislative house by the constitution, it cannot be delegated to another branch of state government.</p>

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New Jersey Commission of Investigation N.J. Stat. Ann. §§ 52:9M-1 et seq., created 1968	<p><i>shall</i> be the judge of elections, returns and qualifications of its own members N. J. Const. art. IV, § 4, Para. 2.</p> <p>Each house <i>shall</i> . . . punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members. N. J. Const. art. IV, § 4, Para. 3.</p>	<p>In <i>Joint Legislative Committee on Ethical Standards v. Perkins</i>, 432 A.2d 116 (N.J. 1981), New Jersey's Joint Legislative Committee on Ethical Standards (Joint Committee), an administrative agency (distinguished from legislative committee) empowered with authority to enforce the state's conflicts-of-interest law, sued a state legislator to collect a fine for his violation of the law. 432 A.2d 116. The legislator argued that the Legislature's delegation of power to the Joint Committee to enforce the state's conflicts-of-interest law was unconstitutional, since the state's constitution gave exclusive authority to each house of the Legislature to punish its members. <i>Id.</i> at 120. The Court disagreed and reasoned that the state conflicts-of-interest law, a general legislative enactment, was applicable to all state officers, including legislators. <i>Id.</i> Further, the Court likened the conflicts-of-interest law to criminal law, in that any person, including a legislator is subject to it. <i>Id.</i> The New Jersey court, therefore, rejected the idea that the Legislature's constitutional rule-making authority overrides the enactment of general laws.</p> <p><i>Note:</i> The Joint Legislative Committee on Ethical Standards was established as an agency to enforce general laws and to impose penalties on persons who violate conflict of interest laws. The function of this agency is <i>distinguished from legislative committees</i> that are established to assist the legislature in performing its functions. The Committee would recommend to the appropriate house of the legislature further action against legislators who violate provisions of the Conflicts of Interest Law by disorderly behavior.</p>
New Jersey Executive Commission on Ethical Standards has jurisdiction over the executive branch		
Oklahoma Ethics Commission Okla. Const. art. XXIX, created 1990	<p><i>shall</i> be the judge of the elections, returns, and qualifications of its own members</p> <p>Each House <i>may</i> . . . punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member... Okla. Const. art. V, § 30.</p>	

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Oregon Government Standards and Practices Commission Or. Rev. Stat. §§ 244.250 - 244.345, created 1974	<p><i>shall</i> judge of the election, qualifications, and returns of its own members Ore. Const. art. IV, § 11.</p> <p>Either house <i>may</i> punish its members for disorderly behavior, and may with the concurrence of two thirds, expel a member; but not a second time for the same cause. Ore. Const. art. IV, § 15.</p>	
Pennsylvania State Ethics Commission 65 Pa. Stat. Ann. §§ 401 et seq., created 1979	<p><i>shall</i> judge of the election and qualifications of its members Penn. Const. art. II, § 9.</p> <p>Each house <i>shall</i> have power to ... punish its members . . . for contempt or disorderly behavior, . . . to enforce obedience to its process, . . . and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause Penn. Const. art. II, § 11.</p>	

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Rhode Island Ethics Commission R.I. Gen. Laws §§ 36-14-8 to 36-14-14; R.I. Const. Art. III, § 8 (2009)	<p><i>shall</i> be the judge of the elections and qualifications of its members</p> <p>R.I. Const. art. VI, § 6.</p> <p>Each house <i>may</i> . . . punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.</p> <p>R.I. Const. art. VI, § 7.</p>	<p>In <i>Irons v. Rhode Island Ethics Commission</i>, 2008 R.I. Super. LEXIS 137 (R.I. Super. 2008) (Providence), an investigation revealed there was probable cause to believe that Irons, who resigned from the Senate in 2003, had violated the ethics code by using his office for financial gain and voting on legislation in which he had a substantial conflict of interest.</p> <p>In 1986, a constitutional amendment created an ethics commission and granted the commission clear authority to prosecute legislators and required that all elected officials, including the General Assembly, be subject to the ethics code. Irons claimed that the Speech or Debate Clause barred his questioning or prosecution for any alleged offense that was based on his legislative duties. The court agreed, finding that the ethics code and the Speech or Debate Clause coexisted so that both were operative. The Speech or Debate Clause provided legislators with express immunity for acts <i>that fell within the parameters of their legislative positions</i>. The Commission could investigate alleged illegal activities <i>that did not pertain to legislative functions</i>. The commission is responsible for advising public officials how to comply with state ethics laws and for hearing complaints alleging nepotism, conflicts-of-interest, financial disclosure violations and other breaches.</p> <p>In <i>In re Advisory Opinion to the Governor</i>, 732 A.2d 55, 75 (R.I. 1999), The governor of Rhode Island requested the state supreme court to issue an opinion as to whether R.I. Const. art. III, § 8 empowered the Ethics Commission to adopt a code of ethics that included provisions on general assembly members' conflicts of interest and use of position. The Rhode Island Ethics Commission adopted a regulation which <i>prohibited members of the general assembly from serving as members of governmental public boards or commissions and from participating in the appointment process to those entities</i>. The court found that the commission was without authority to adopt such a regulation. The court explained that in light of governmental history, the commission did not have the power to amend the constitutional framework of government, but instead was <i>designed to deal with individual conduct and not governmental structure</i>. The Commission did not have the power under the state constitution to restrict general assembly members' appointive power and, thus, did not have the power to adopt the conflicts of interest and use of position provisions of the code of ethics.</p>

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Rhode Island continued	continued	<p>In <i>In re Advisory Opinion to the Governor</i>, 612 A.2d 1 (R.I. 1992), the governor asked the Rhode Island Supreme Court to consider whether the language in the state's constitution, which established an independent non-partisan ethics commission and authorized the commission to adopt a code of ethics, conferred substantive legislative power regarding ethics on the commission.</p> <p>The court recognized that the primary intent of the provision was to vest in the ethics commission the "authority to develop a code of ethics, to investigate violations, and to enforce its provisions, <i>always subject to review by the judicial branch of government</i> consistent with the Constitution." 612 A.2d at 10-11. The provision did not create or establish any "fourth branch" of state government, but merely served to transfer to the commission a limited portion of what had always been a legislative prerogative, namely, the enactment of substantive ethics regulations. The constitution gave the General Assembly and the commission a concurrent authority to enact substantive legislation on codes of ethical conduct. That concurrent authority limits the Legislature only from "enacting laws that [would be] inconsistent with, or contradictory to [any] code of ethics adopted by the commission." 612 A.2d at 14.</p>
Tennessee Ethics Commission Tenn. Code Ann. § 3-6-101 et seq. created 2006		<p><i>shall</i> be judges of the qualifications and election of its members Tenn. Const. art. II, § 11.</p> <p>Each House <i>may</i> . . . punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence Tenn. Const. art. II, § 12.</p>
Tennessee Registry of Election Finance Tenn. Code Ann. § 2-10-201 et seq., created 1989		<p><i>shall</i> be the judge of the qualifications and election of its own members; but contested elections shall be determined . . . by law Tex. Const. art. III, § 8.</p> <p>Each House <i>may</i> . . . punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense Tex. Const. art. III, § 11.</p>
Texas Ethics Commission Tex. Gov't Code Ann. § 571; Texas Const. art. III, § 24a, created 1991		

State Independent Ethics Commission	Judge Members' Elections and Qualifications -- Censure or Discipline	Case Law Addressing Independent Ethics Commissions and Separation of Powers Issues (<i>Including Additional Comments</i>)
Washington State Legislative Ethics Board Wash. Rev. Code Ann. § 42.52	<i>shall</i> be the judge of the election, returns and qualifications of its own members Wash. Const. art. II, § 8.	The State Legislative Ethics Board has jurisdiction only over the legislature for ethics code enforcement. The State Executive Ethics Board has jurisdiction only over the executive for ethics code enforcement.
Washington Public Disclosure Commission Wash. Rev. Code 42.17.350, created 1973 (by Initiative 273)	Each house <i>may</i> . . . punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense. Wash. Const. art II, § 9.	Legislators, Executive Branch officials, and all candidates file financial disclosures with the Washington Public Disclosure Commission, but the Legislative Ethics Board enforces the ethics codes.
West Virginia Ethics Commission W.V. Code § 6B-2-1, created 1989	<i>shall</i> . . . be the judge of the elections, returns and qualifications of its own members W.V. Const. art VI, § 24.	Each house <i>may</i> punish its own members for disorderly behavior, and with the concurrence of two thirds of the members elected thereto, expel a member, but not twice for the same offence. W.V. Const. art VI, § 25.
Wisconsin Government Accountability Board Wis. Stat. § 5.05	<i>shall</i> be the judge of the elections, returns and qualifications of its own members Wis. Const. art. IV, § 7.	Each house <i>may</i> . . . punish for contempt and disorderly behavior, and with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same cause Wis. Const. art. IV, § 8.

Sources: National Conference of State Legislatures (NCSL), www.ncsl.org; individual state constitutions, codes, and case law (including Lexis-Nexis summaries); *Commission on Ethics of the State of Nevada v. Hardy*, No. 53064 (May 21, 2009) (Nevada Supreme Court Appellee and Appellant Briefs and Order of Affirmance).